

VZCZCXRO2211  
PP RUEH DU RUEHGI RUEHJO RUEHMR  
DE RUEH KI #1098/01 1881515  
ZNR UUUUU ZZH  
P 071515Z JUL 06  
FM AMEMBASSY KINSHASA  
TO RUEHC/SECSTATE WASHDC PRIORITY 4336  
INFO RUEHXR/RWANDA COLLECTIVE  
RUCNSAD/SOUTHERN AFRICAN DEVELOPMENT COMMUNITY  
RUEAIIA/CIA WASHDC  
RHEFDIA/DIA WASHDC  
RHMFISS/HQ USEUCOM VAIHINGEN GE  
RUFOADA/JAC MOLESWORTH RAF MOLESWORTH UK

UNCLAS SECTION 01 OF 02 KINSHASA 001098

SIPDIS

SIPDIS

DEPT FOR G/TIP

E.O. 12958: N/A

TAGS: [PHUM](#) [PGOV](#) [KCRM](#) [KWMN](#) [CG](#)

SUBJECT: LANDMARK SEXUAL VIOLENCE LAW ADOPTED BY NATIONAL  
ASSEMBLY

¶1. (U) Summary: The National Assembly of the DRC passed landmark sexual and gender-based violence legislation on June 22. The legislation, which was drafted by a coalition of human rights groups, women's rights groups, and lawyers with USG assistance, contains unprecedented measures against trafficking and prostitution of women and children, sexual slavery, forced marriage, and criminalizes rape. End summary.

¶2. (U) A coalition of women's rights groups, human rights activists, and lawyers convened and supported by the international NGO Global Rights (Note: The Global Rights program is designed, managed, and funded by USAID. End note) drafted and pushed the legislation, which languished on the Transitional Government agenda for more than a year. The resultant law came in response to epidemic levels of rape and sexual servitude perpetrated by DRC armed groups against noncombatants. Sexual violence has been particularly prevalent in the eastern provinces of South Kivu, Maniema, North Kivu, and Katanga where, according to a recent report, over 40,000 cases of rape were documented between 1998 and 2005. (Note: This number severely understates the scope of the problem, as the societal stigma against rape in DRC prevents many, if not most, reports of the crime. End note.)

#### Penalties for Rape

¶3. (U) The new law redefines rape to include any forced penetration, including with foreign objects, by any person of any age. It also includes anyone who forces a third party to rape a woman (or man, or child). The newly introduced penalty is 5-20 years incarceration and not less than a 100,000 Congolese franc fine (about 225 USD). Rape leading to death produces an automatic life sentence. These penalties are doubled if the person committing the rape meets any of the following criteria -- is related to the victim, is in a position of authority, is the victim's teacher or servant, is a public official or medical personnel, is aided by others (i.e. gang rape), is holding the victim captive at the time of the rape, commits the rape in public, severely harms the victim physically or psychologically, or rapes a person with a disability.

¶4. (U) Sexual mutilation (Note: Often practiced by militia. End note) of victims is specifically proscribed as well and earns the perpetrator 2-5 years in prison (if causing death 10-20 years in prison) and a 200,000 Congolese franc fine (about 450 USD). Also, if the perpetrator deliberately infects the victim with an incurable sexually transmitted disease, the punishment is 5-15 years and a 200,000 Congolese franc fine. Finally, forced pregnancy,

with a punishment of 5 years imprisonment, and forced sterilization, with a punishment of 5-15 years imprisonment, address variations of the sexual violence often inflicted upon Congolese women.

#### Trafficking, Prostitution, and Other Crimes

-----

¶5. (U) The law also addresses related crimes of sexual violence. Pimping, or procuring prostitutes for others, is punishable by 3 months to 5 years of imprisonment and a 50,000 to 100,000 Congolese franc fine (110-225 USD) when the prostitute is 18 or older, and includes running a house of prostitution. The penalty for prostituting children is 5-20 years incarceration and a 200,000 Congolese franc fine and specifically includes transferring (trafficking) children with the intent of sexual exploitation. Child pornography is also prohibited; punishment is 3 months to 5 years imprisonment and 150,000 Congolese franc fine (about 325 USD).

¶6. (U) In addition to rape and prostitution, sexual harassment and forced marriage are proscribed by the new law. Sexual harassment, characterized as an abuse of authority with a view to seeking sexual favors, is punishable by 1-12 months in prison or a fine of 50,000 Congolese francs. Forced marriage, by a person in a position of parental authority, carries a 1-12 month sentence and 100,000 Congolese franc fine. The penalties are doubled when the person being forced to marry is under 18 years of age.

#### An End to Impunity

-----

¶7. (U) Given that the majority of perpetrators of sexual violence in the DRC in recent years have been military or official personnel, the law specifically states that "the

KINSHASA 00001098 002 OF 002

official status of the perpetrator of sexual violence does not exonerate him from criminal responsibility or constitute a cause for reduction of the penalty." Similarly, the next article adds that "the fact that person who commits an act of sexual violence does so in the execution of a civil or military order does not exonerate him from criminal responsibility."

#### Procedural Improvements to Aid Victims

-----

¶8. (U) Victims' rights are also addressed in the new law. The police officer receiving the sexual violence complaint has 24 hours to report it to judicial authorities, and a limit of one month is imposed for the length of the inquest and judgment in sexual violence cases. The law requires the victim be provided the assistance of council as well any medical or psychological help needed. The victim's security and physical and psychological well-being must be protected, and confidentiality must be maintained through the use of close-circuit cameras and pseudonyms when necessary.

¶9. (U) Regarding measures of proof, the law also forbids future or past sexual activities of the victim or witnesses from being used as evidence or to discredit them. Furthermore, consent is specifically defined -- it cannot be given by inference from the words or actions of the victim unable to give proper consent, nor can it be inference by silence or lack of resistance, nor can it be considered freely given when force, threat, or constraint has been used.

¶10. (U) Comment: This ambitious law is the result of ground-breaking lobby efforts spearheaded by USAID and its partners and brings DRC's prohibitions against sexual violence in line with Western progressive legal systems and represents the first specific legislation against child and adult trafficking and prostitution. It also has a series of "unfunded mandates," such as psychological counseling, victim anonymity, and prompt court hearings for which, even if funds were provided, the infrastructure simply does not exist. Nevertheless, the establishment of severe punishments for the

most commonly committed crime against women in the DRC, rape, allows the fledgling justice sector to fight against impunity on its most abused front.

MEECE